1 John V. Picone III, Bar No. 187226
   jpicone@hopkinscarley.com
2 Jeffrey M. Ratinoff, Bar No. 197241
   jratinoff@hopkinscarley.com
3 Cary Chien, Bar No. 274078
   cchien@hopkinscarley.com
4 HOPKINS & CARLEY
   A Law Corporation
5 The Letitia Building
   70 South First Street
6 San Jose, CA 95113-2406

7 *mailing address:*
   P.O. Box 1469
8 San Jose, CA 95109-1469
   Telephone: (408) 286-9800
9 Facsimile: (408) 998-4790

10 Attorneys for Plaintiff
   NEO4J, INC.

11

12   UNITED STATES DISTRICT COURT

13   NORTHERN DISTRICT OF CALIFORNIA

14 NEO4J, INC., a Delaware corporation,   CASE NO. 5:19-cv-06226-EJD

15   Plaintiff,   **DECLARATION OF CARY CHIEN IN
                                                 SUPPORT OF NEO4J'S MOTION TO
16   v.   STRIKE**

17 GRAPH FOUNDATION, INC., an Ohio   Date: May 7, 2020
   corporation,   Time: 9:00 a.m.
18   Location: Courtroom 4, 5th Floor
            Defendant.   Judge: Hon. Edward J. Davila
19

20   I, Cary Chien, declare as follows:

21   1.   I am an attorney at law, duly licensed to practice before all courts of the State of

22 California, and am of counsel with Hopkins & Carley, a Law Corporation, attorney of record for

23 Plaintiff Neo4j, Inc. ("Plaintiff") in the above-referenced matter. I make this declaration in

24 support of Plaintiff's Motion to Strike filed herewith in the above-captioned matter.

25   2.   The facts stated herein are based on my personal knowledge, except with respect

26 to those matters stated to be on information and belief, and as to those matters, I believe them to

27 be true. If called upon to testify as a witness in this matter, I could and would do so competently.

28

HOPKINS & CARLEY
ATTORNEYS AT LAW
SAN JOSE ♦ PALO ALTO

842\3425709.1

DECLARATION OF CARY CHIEN IN SUPPORT OF MOTION TO STRIKE

3.	I understand that on January 7, 2020, counsel for Neo4j Jeffrey Ratinoff and counsel for Graph Foundation John Pernick discussed over the phone as part of their Rule 26 conference Neo4j USA's concerns with the deficiencies with the affirmative defenses in Graph Foundation's original answer and Neo4j USA's desire to file a Rule 12 motion to address those deficiencies. The meet and confer was followed up by written correspondence on the same day and the following day. Attached hereto as **Exhibit 1** is a true and correct copy of the meet and confer correspondence between Mr. Ratinoff and Mr. Pernick.

4.	Following the phone call, Neo4j USA's counsel Jeffrey Ratinoff detailed the concerns discussed over the phone in a letter addressed to Graph Foundation's counsel John Pernick dated January 8, 2020. Attached hereto as **Exhibit 2** is a true and correct copy of the January 8, 2020 letter.

5.	Attached hereto as **Exhibit 3** is a true and correct copy of the GitHub Terms of Service, which was downloaded from the URL "https://help.github.com/en/articles/github-terms-of-service", the same link referenced and relied upon by GFI in its Amended Answer. The Acceptable Use section (c) of this exhibit states:

> Your use of the Website and Service must not violate any applicable laws, including copyright or trademark laws, export control or sanctions laws, or other laws in your jurisdiction. You are responsible for making sure that your use of the Service is in compliance with laws and any applicable regulations.

6.	Attached hereto as **Exhibit 4**, is a true and correct copy of the Trademark Registration Certificate for the "Neo4j®" trademark, Registration No. 4,784,280, dated August 4, 2015, which was downloaded from the USPTO's Trademark Status and Document Retrieval (TSDR) system.

7.	Attached hereto as **Exhibit 5** is a true and correct copy of Neo4j USA's webpage, http://www.neotechnology.com, archived on August 23, 2011, which was downloaded from the Wayback Machine website, a digital archive of the World Wide Web (https://web.archive.org).

8.	Attached hereto as **Exhibit 6** is a true and correct copy of Neo4j USA's webpage, http://neotechnology.com/products/price-list/, archived on August 23, 2011 by the Wayback Machine, a digital archive of the World Wide Web (https://web.archive.org).

9.   Attached hereto as **Exhibit 7** is a true and correct copy of Neo4j USA's webpage, http://neotechnology.com/neo4j-graph-database/, archived on March 26, 2014 by the Wayback Machine, a digital archive of the World Wide Web (https://web.archive.org).

10.   Attached hereto as **Exhibit 8** is a true and correct copy of Neo4j USA's webpage, http://neotechnology.com/products/price-list/, archived on March 26, 2014 by the Wayback Machine, a digital archive of the World Wide Web (https://web.archive.org).

11.   Attached hereto as **Exhibit 9** is a true and correct copy of the GNU Affero General Public License published by Free Software Foundation from downloaded from GNU official website (URL: http://www.gnu.org).

12.   Attached hereto as **Exhibit 10** is a true and correct copy of the website domain registration page for Neo4j USA's URL http://www.neo4j.org showing the domain was created on June 4, 2006, from the WHOIS lookup service, a publicly accessible database containing ownership and registration information for Internet domain names.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed the 7th day of February 2020, at San Jose, California.

/s/ Cary Chien
Cary Chien

HOPKINS & CARLEY
ATTORNEYS AT LAW
SAN JOSE ♦ PALO ALTO

842\3425709.1   - 3 -

DECLARATION OF CARY CHIEN IN SUPPORT OF MOTION TO STRIKE

Exhibit 1

From: John Pernick <jpernick@be-law.com>
Sent: Wednesday, January 8, 2020 5:37 PM
To: Jeffrey M. Ratinoff
Cc: Carrie Burkhart; John V. Picone; Cary Chien
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Thank you Jeff,

I am speaking with my client tomorrow and will talk about mediation scheduling and the other issues we discussed at that time. As for your letter, I am reviewing it and will get back to you and Cary by email sometime next week.

I hope your procedure goes well.

John

John D. Pernick | Bergeson
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

Silicon Valley Office | San Francisco Office | Beverly Hills Office
Website | vCard | Email | Bio | LinkedIn | Disclaimer

From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Sent: Wednesday, January 8, 2020 5:34 PM
To: John Pernick <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Hi John,

I heard back from Judge Infante's assistant, and his current available dates in April are: 1, 7, 8, 14-16, 21-23, and 28. Let me know which dates work for you and your client. Also, I apologize that I wasn't able to get you a draft CMC statement before go on leave, but should be able to get you a draft later next week. Since the CMC is not until March, I assume this won't be an issue.

Also, please feel free to reach out to Cary in my absence should you wish to further discuss the issues raised in my letter concerning Graph Foundation's answer.

Regards,
Jeff

From: Jeffrey M. Ratinoff
Sent: Wednesday, January 8, 2020 8:46 AM
To: 'John Pernick' <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

John,

Thanks for putting this together. You have my permission to file. I should have a meet and confer letter over to you today.

Regards,
Jeff

From: John Pernick <jpernick@be-law.com>
Sent: Tuesday, January 7, 2020 3:02 PM
To: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Jeff,

Attached is a draft stipulation extending the deadline for the motion to strike.

John

John D. Pernick | Bergeson LLP
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

Silicon Valley Office | San Francisco Office | Beverly Hills Office
Website | vCard | Email | Bio | LinkedIn | Disclaimer

From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Sent: Tuesday, January 7, 2020 12:45 PM
To: John Pernick <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

John,

Per the attached we agreed on 2pm. Will that still work?

Thanks,
Jeff

From: John Pernick <jpernick@be-law.com>
Sent: Tuesday, January 7, 2020 12:43 PM
To: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Jeff, just following up to see if we can move this call to 2:30.

Thank you,

John

John D. Pernick | Bergeson LLP
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

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From: John Pernick <jpernick@be-law.com>
Sent: Tuesday, January 7, 2020 9:45 AM
To: 'Jeffrey M. Ratinoff' <jratinoff@hopkinscarley.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; 'John V. Picone' <jpicone@hopkinscarley.com>; 'Cary Chien' <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Jeff, can we move our call to 2:30

Thank you,

John

John D. Pernick | Bergeson LLP
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

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From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Sent: Friday, December 20, 2019 10:10 AM
To: John Pernick <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Hi John,

Thanks for the clarification. How about 1:30 pm on 1/7? I'll get a draft CMC statement over to you before then. In the meantime, please let me know when you schedule shores up. We'll also call the clerk to see if there are particular days in January when the Judge may have some availability.

Regards,
Jeff

From: John Pernick <jpernick@be-law.com>
Sent: Friday, December 20, 2019 9:57 AM
To: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Jeff, I was talking about the CMC with respect to my scheduling issue..

For rule 26(f), I can do Jan 7.

John

John D. Pernick | Bergeson LLP
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

Silicon Valley Office | San Francisco Office | Beverly Hills Office
Website | vCard | Email | Bio | LinkedIn | Disclaimer

From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Sent: Friday, December 20, 2019 9:55 AM
To: John Pernick <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Hi John,

I'd like to get something on calendar now for the Rule 26(f) no later than the second week in January. I am general available on 12/23, 12/26, 12/27 (morning), 12/30, 12/31, 1/6, 1/7 and 1/8, 1/14, 1/15, 1/16 and 1/17. It should only take an hour, so I am sure you can squeeze it in or there is someone in your office that can handle it should your expert depositions end up conflicting.

Thanks,
Jeff

From: John Pernick <jpernick@be-law.com>
Sent: Friday, December 20, 2019 9:41 AM
To: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

Jeff,

I will talk with my client regarding the coordination issue. Right now, I can't schedule anything in January because I need to schedule expert depositions so don't know what dates are open. I should have that info in the next week or so. February is also tough because I have a trial starting Feb. 10.

John

John D. Pernick | Bergeson
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

Silicon Valley Office | San Francisco Office | Beverly Hills Office
Website | vCard | Email | Bio | LinkedIn | Disclaimer

From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Sent: Thursday, December 19, 2019 5:22 PM
To: John Pernick <jpernick@be-law.com>
Cc: Carrie Burkhart <cburkhart@be-law.com>; John V. Picone <jpicone@hopkinscarley.com>; Cary Chien <cchien@hopkinscarley.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

John,

Now that the court has set aside the default and scheduled a case management conference for March 5, 2020. We wanted to set up a time to conduct a Rule 26(f) conference. I am in and out of the office over the holidays, can set aside some time if that works for you.

Also, as I am sure you know there is substantial overlap of Neo4j's claims in relation to ONgDB in both actions. We also believe that the adjudication of the counterclaims recently asserted by iGov/PureThink may ultimately affect Graph Foundation. Now that both cases are related, we think it would make sense to request an earlier CMC in both cases (perhaps in late January 2020) so that we can coordinate, if not consolidate common claims/issues to prevent duplicative work and/or inconsistencies.

I've already reached out to iGov/PureThink's counsel to see whether they were interested in requesting an earlier joint CMC. They seem to be open to the idea and are going to confirm with their clients.

Please let us know your thoughts on us filing an administrative request to have the Court sync things up before March 2020.

Thanks,
Jeff

From: John Pernick <jpernick@be-law.com>
Sent: Thursday, December 12, 2019 11:21 AM
To: John V. Picone <jpicone@hopkinscarley.com>
Cc: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>; Carrie Burkhart <cburkhart@be-law.com>
Subject: RE: JMS Settlement Terms Rule 408 Settlement Communication

John, separately, I have not seen an order vacating the default, have you?

John D. Pernick | Bergeson
Partner

O 408.291.6200 | **D** 408.291.2253 | **M** 415.310.2654

Silicon Valley Office | San Francisco Office | Beverly Hills Office
Website | vCard | Email | Bio | LinkedIn | Disclaimer

From: John V. Picone <jpicone@hopkinscarley.com>
Sent: Thursday, December 12, 2019 9:41 AM
To: John D. Pernick (jpernick@be-law.com) <jpernick@be-law.com>
Cc: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>
Subject: JMS Settlement Terms Rule 408 Settlement Communication

John:

Attached is the last iteration of the settlement term sheet that the parties exchanged during the recent mediation with Judge Infante. At that time, JMS' counsel said that he would send to/contact GF to determine if the parties could obtain a global resolution. It is not clear that GF received this information in the aftermath of the mediation. Consequently, we wanted to make sure that you were aware that the parties had considered the attached as a possible resolution pathway.

Please let me know if you have any questions or comments.

Regards,

John V. Picone
Shareholder

hopkins carley

Hopkins & Carley | A Law Corporation
San Jose | Palo Alto
70 South First Street | San Jose, CA 95113
Direct: 408.299.1388 | Mobile: 831.801.9042
Main: 408.286.9800 | Fax: 408.998.4790
jpicone@hopkinscarley.com
hopkinscarley.com | LinkedIn

_____

Exhibit 2

hopkins carley

January 8, 2020

Jeffrey M. Ratinoff
jratinoff@hopkinscarley.com
T. 408.299.1336
F. 408.938.6261

Via Electronic Mail Only (jpernick@be-law.com)

John D. Pernick, Esq.
Bergeson LLP
111 N. Market St., Suite 600
San Jose, CA 95113

> **Re:** **Neo4j, Inc. v. Graph Foundation Inc. – Pleading Deficiencies in Affirmative Defenses, Case No.: 3:19-cv-06226-EJD**

Dear John:

Following up on our call yesterday, I am writing to detail the deficiencies in Graph Foundation's Answer. As you know, courts in this District have held that the heightened pleading standard for complaints articulated in *Twombly* and *Iqbal* also applies to affirmative defenses. *See Perez v. Gordon & Wong Law Group, P.C.*, No. 11-CV-03323-LHK, 2012 WL 1029425, at *8 (N.D. Cal. Mar. 26, 2012) (collecting cases). In this regard, several of Graph Foundation's affirmative defenses are deficient as explained below.

Second Affirmative Defense for Unclean Hands and Ninth Affirmative Defense for Waiver

The allegations of both the second and ninth affirmative defenses consist of a mere reference to the doctrines of waiver and unclean hands without any supporting facts. Such bare conclusory statements are insufficient. *See Hartford Underwriters Ins. Co. v. Kraus USA, Inc.*, 313 F.R.D. 572, 576 (N.D. Cal. 2016) ("mere reference to a legal doctrine is not a sufficient affirmative defense absent allegations of supporting facts"). At a minimum, Graph Foundation's answer must set out the elements of these affirmative defenses and some factual allegations that meet those elements. *See Qarbon.com Inc. v. eHelp Corp.*, 315 F.Supp.2d 1046, 1050 (N.D. Cal. 2004).

Fourth Affirmative Defense for Naked License Abandonment of Trademark

None of the allegations—relating to the alleged "confusion" and open-source licensing/distribution—actually meet either statutory definition of "abandonment" under 15 U.S.C. § 1127. Specifically, the allegations supporting this defense do not meet the

John D. Pernick, Esq.
January 8, 2020
Page 2

first definition because there are no allegations that Neo4j discontinued use of the NEO4J® mark. The allegations supporting this defense also fail to meet the second definition because there are no facts alleged establishing that the open source licensing of NEO4J® branded software has resulted in any loss of significance of the NEO4J® mark, the key requirement of abandonment under 15 U.S.C. § 1127. *See BarcamericaInt'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002). Thus, this defense is not plausible as currently pled.

Fifth, Sixth, and Seventh Affirmative Defenses

Each of these defenses allege a factual scenario—relating to the AGPL, the Commons Clause, and GitHub—by which Graph Foundation is supposedly absolved of liability from violating the Lanham Act and California's Unfair Competition Law ("UCL"). Generally, "[a]ffirmative defenses plead matters extraneous to the plaintiff's prima facie case, which deny plaintiff's right to recover, even if the allegations of the complaint are true." *G & G Closed Circuit Events, LLC v. Nguyen*, No. 10–168, 2010 WL 3749284, at *5 (N.D.Cal. Sept. 23, 2010) (internal quotation marks omitted). As pled, none of these appear to be legally cognizable defenses should Neo4j establish that Graph Foundation violated the Lanham Act and/or the UCL.

Neo4j's claims are also not based on violations of the AGPL or the GitHub Terms of Service. As a result, these three defenses assert immaterial matters because they have "no essential or important relationship to the claim for relief or the defenses being plead." *Whittlestone, Inc. v. Handi–Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010) (internal citation omitted). We therefore believe these defenses are subject to being stricken under *Twombly/Iqbal* standard, as well as because they are impertinent and immaterial as contemplated by Rule 12(f).

Eighth Affirmative Defenses for Cancellation of Trademark Procured by Fraud.

In asserting a defense for fraud in the procurement of a trademark, Graph Foundation "bears heavy burden of demonstrating that a trademark should be cancelled." *Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1097 (9th Cir. 2013). Consequently, it must meet the heightened pleading requirements imposed by Federal Rule of Civil Procedure 9(b). *Aureflam Corp. v. Pho Hoa Phat I, Inc.*, 375 F.Supp.2d 950, 953 (N.D. Cal. 2005) (recognizing that Rule 9(b)'s heightened pleading requirement applies to claims of fraud in the procurement of trademarks).

As alleged, Graph Foundation's eight affirmative defense consists of conclusory allegations that the NEO4J® mark was purportedly "procured by fraud" and "should be cancelled pursuant to 15 U.S.C. §1119." Such factually devoid allegations fail to meet both the basic pleading standards under *Twombly/Iqbal,* and more importantly Rule 9's heightened requirements.

John D. Pernick, Esq.
January 8, 2020
Page 3

Please let us know before January 15, 2020 how Graph Foundation intends to address the above outlined deficiencies so that we might be able to avoid motion practice. We are also happy to schedule another call to further discuss any of the foregoing.

Very truly yours,

HOPKINS & CARLEY
A Law Corporation

Jeffrey M. Ratinoff

JMR/dlh

815\3427966.2

Exhibit 3

◉ **GitHub Help**

GitHub Terms of Service

In this article

Thank you for using GitHub! We're happy you're here. Please read this Terms of Service agreement carefully before accessing or using GitHub. Because it is such an important contract between us and our users, we have tried to make it as clear as possible. For your convenience, we have presented these terms in a short non-binding summary followed by the full legal terms.

Summary

Section	What can you find there?
A. Definitions	Some basic terms, defined in a way that will help you understand this agreement. Refer back up to this section for clarification.
B. Account Terms	These are the basic requirements of having an Account on GitHub.
C. Acceptable Use	These are the basic rules you must follow when using your GitHub Account.
D. User-Generated Content	You own the content you post on GitHub. However, you have some responsibilities regarding it, and we ask you to grant us some rights so we can provide services to you.
E. Private Repositories	This section talks about how GitHub will treat content you post in private repositories.
F. Copyright & DMCA Policy	This section talks about how GitHub will respond if you believe someone is infringing your copyrights on GitHub.
G. Intellectual Property Notice	This describes GitHub's rights in the website and service.
H. API Terms	These are the rules for using GitHub's APIs, whether you are using the API for development or data collection.
I. Additional Product Terms	We have a few specific rules for GitHub's features and products.
J. Beta Previews	These are some of the additional terms that apply to GitHub's features that are still in development.
K. Payment	You are responsible for payment. We are responsible for billing you accurately.
L. Cancellation and Termination	You may cancel this agreement and close your Account at any time.

Section	What can you find there?
M. Communications with GitHub	We only use email and other electronic means to stay in touch with our users. We do not provide phone support.
N. Disclaimer of Warranties	We provide our service as is, and we make no promises or guarantees about this service. **Please read this section carefully; you should understand what to expect.**
O. Limitation of Liability	We will not be liable for damages or losses arising from your use or inability to use the service or otherwise arising under this agreement. **Please read this section carefully; it limits our obligations to you.**
P. Release and Indemnification	You are fully responsible for your use of the service.
Q. Changes to these Terms of Service	We may modify this agreement, but we will give you 30 days' notice of changes that affect your rights.
R. Miscellaneous	Please see this section for legal details including our choice of law.

The GitHub Terms of Service

Effective date: November 13, 2019

A. Definitions

Short version: *We use these basic terms throughout the agreement, and they have specific meanings. You should know what we mean when we use each of the terms. There's not going to be a test on it, but it's still useful information.*

1 An "Account" represents your legal relationship with GitHub. A "User Account" represents an individual User's authorization to log in to and use the Service and serves as a User's identity on GitHub. "Organizations" are shared workspaces that may be associated with a single entity or with one or more Users where multiple Users can collaborate across many projects at once. A User Account can be a member of any number of Organizations.

2   The "Agreement" refers, collectively, to all the terms, conditions, notices contained or referenced in this document (the "Terms of Service" or the "Terms") and all other operating rules, policies (including the GitHub Privacy Statement, available at github.com/site/privacy) and procedures that we may publish from time to time on the Website. Most of our site policies are available at help.github.com/categories/site-policy.

3   "Beta Previews" mean software, services, or features identified as alpha, beta, preview, early access, or evaluation, or words or phrases with similar meanings.

4   "Content" refers to content featured or displayed through the Website, including without limitation code, text, data, articles, images, photographs, graphics, software, applications, packages, designs, features, and other materials that are available on the Website or otherwise available through the Service. "Content" also includes Services. "User-Generated Content" is Content, written or otherwise, created or uploaded by our Users. "Your Content" is Content that you create or own.

5   "GitHub," "We," and "Us" refer to GitHub, Inc., as well as our affiliates, directors, subsidiaries, contractors, licensors, officers, agents, and employees.

6   The "Service" refers to the applications, software, products, and services provided by GitHub, including any Beta Previews.

7   "The User," "You," and "Your" refer to the individual person, company, or organization that has visited or is using the Website or Service; that accesses or uses any part of the Account; or that directs the use of the Account in the performance of its functions. A User must be at least 13 years of age. Special terms may apply for business or government Accounts (See Section B(5): Additional Terms).

8   The "Website" refers to GitHub's website located at github.com, and all content, services, and products provided by GitHub at or through the Website. It also refers to GitHub-owned subdomains of github.com, such as education.github.com and pages.github.com. These Terms also govern GitHub's conference websites, such as githubuniverse.com, and product websites, such as atom.io. Occasionally, websites owned by GitHub may provide different or additional terms of service. If those additional terms conflict with this Agreement, the more specific terms apply to the relevant page or service.

B. Account Terms

Short version: *User Accounts and Organizations have different administrative controls; a human must create your Account; you must be 13 or over; you must provide a valid email address; and you may not*

have more than one free Account. You alone are responsible for your Account and anything that happens while you are signed in to or using your Account. You are responsible for keeping your Account secure.

1. Account Controls

- Users. Subject to these Terms, you retain ultimate administrative control over your User Account and the Content within it.

- Organizations. The "owner" of an Organization that was created under these Terms has ultimate administrative control over that Organization and the Content within it. Within the Service, an owner can manage User access to the Organization's data and projects. An Organization may have multiple owners, but there must be at least one User Account designated as an owner of an Organization. If you are the owner of an Organization under these Terms, we consider you responsible for the actions that are performed on or through that Organization.

2. Required Information

You must provide a valid email address in order to complete the signup process. Any other information requested, such as your real name, is optional, unless you are accepting these terms on behalf of a legal entity (in which case we need more information about the legal entity) or if you opt for a paid Account, in which case additional information will be necessary for billing purposes.

3. Account Requirements

We have a few simple rules for User Accounts on GitHub's Service.

- You must be a human to create an Account. Accounts registered by "bots" or other automated methods are not permitted. We do permit machine accounts:
- A machine account is an Account set up by an individual human who accepts the Terms on behalf of the Account, provides a valid email address, and is responsible for its actions. A machine account is used exclusively for performing automated tasks. Multiple users may direct the actions of a machine account, but the owner of the Account is ultimately responsible for the machine's actions. You may maintain no more than one free machine account in addition to your free User Account.
- One person or legal entity may maintain no more than one free Account (if you choose to control a machine account as well, that's fine, but it can only be used for running a machine).
- You must be age 13 or older. While we are thrilled to see brilliant young coders get excited by learning to program, we must comply with United States law. GitHub does not target our Service to children under 13, and we do not permit any Users under 13 on our Service. If we learn of any User under the age of 13, we will terminate that User's Account immediately. If you

are a resident of a country outside the United States, your country's minimum age may be older; in such a case, you are responsible for complying with your country's laws.

- Your login may only be used by one person — i.e., a single login may not be shared by multiple people. A paid Organization may only provide access to as many User Accounts as your subscription allows.

- You may not use GitHub in violation of export control or sanctions laws of the United States or any other applicable jurisdiction. You may not use GitHub if you are or are working on behalf of a Specially Designated National (SDN) or a person subject to similar blocking or denied party prohibitions administered by a U.S. government agency. GitHub may allow persons in certain sanctioned countries or territories to access certain GitHub services pursuant to U.S. government authorizations. For more information, please see our Export Controls policy.

4. User Account Security

You are responsible for keeping your Account secure while you use our Service. We offer tools such as two-factor authentication to help you maintain your Account's security, but the content of your Account and its security are up to you.

- You are responsible for all content posted and activity that occurs under your Account (even when content is posted by others who have Accounts under your Account).

- You are responsible for maintaining the security of your Account and password. GitHub cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.

- You will promptly notify GitHub if you become aware of any unauthorized use of, or access to, our Service through your Account, including any unauthorized use of your password or Account.

5. Additional Terms

In some situations, third parties' terms may apply to your use of GitHub. For example, you may be a member of an organization on GitHub with its own terms or license agreements; you may download an application that integrates with GitHub; or you may use GitHub to authenticate to another service. Please be aware that while these Terms are our full agreement with you, other parties' terms govern their relationships with you.

If you are a government User or otherwise accessing or using any GitHub Service in a government capacity, this Government Amendment to GitHub Terms of Service applies to you, and you agree to its provisions.

If you have signed up for GitHub Enterprise Cloud, the Enterprise Cloud Addendum applies to you, and you agree to its provisions.

GitHub Terms of Service - GitHub Help

C. Acceptable Use

Short version: *GitHub hosts a wide variety of collaborative projects from all over the world, and that collaboration only works when our users are able to work together in good faith. While using the service, you must follow the terms of this section, which include some restrictions on content you can post, conduct on the service, and other limitations. In short, be excellent to each other.*

Your use of the Website and Service must not violate any applicable laws, including copyright or trademark laws, export control or sanctions laws, or other laws in your jurisdiction. You are responsible for making sure that your use of the Service is in compliance with laws and any applicable regulations.

You agree that you will not under any circumstances violate our Acceptable Use Policies or Community Guidelines.

D. User-Generated Content

Short version: *You own content you create, but you allow us certain rights to it, so that we can display and share the content you post. You still have control over your content, and responsibility for it, and the rights you grant us are limited to those we need to provide the service. We have the right to remove content or close Accounts if we need to.*

1. Responsibility for User-Generated Content

You may create or upload User-Generated Content while using the Service. You are solely responsible for the content of, and for any harm resulting from, any User-Generated Content that you post, upload, link to or otherwise make available via the Service, regardless of the form of that Content. We are not responsible for any public display or misuse of your User-Generated Content.

2. GitHub May Remove Content

We do not pre-screen User-Generated Content, but we have the right (though not the obligation) to refuse or remove any User-Generated Content that, in our sole discretion, violates any GitHub terms or policies.

3. Ownership of Content, Right to Post, and License Grants

You retain ownership of and responsibility for Your Content. If you're posting anything you did not create yourself or do not own the rights to, you agree that you are responsible for any Content you post; that you will only submit Content that you have the right to post; and that you will fully comply with any third party licenses relating to Content you post.

Because you retain ownership of and responsibility for Your Content, we need you to grant us —
and other GitHub Users — certain legal permissions, listed in Sections D.4 — D.7. These license
grants apply to Your Content. If you upload Content that already comes with a license granting
GitHub the permissions we need to run our Service, no additional license is required. You
understand that you will not receive any payment for any of the rights granted in Sections D.4 —
D.7. The licenses you grant to us will end when you remove Your Content from our servers, unless
other Users have forked it.

4. License Grant to Us

We need the legal right to do things like host Your Content, publish it, and share it. You grant us and
our legal successors the right to store, parse, and display Your Content, and make incidental copies
as necessary to render the Website and provide the Service. This includes the right to do things like
copy it to our database and make backups; show it to you and other users; parse it into a search
index or otherwise analyze it on our servers; share it with other users; and perform it, in case Your
Content is something like music or video.

This license does not grant GitHub the right to sell Your Content or otherwise distribute or use it
outside of our provision of the Service.

5. License Grant to Other Users

Any User-Generated Content you post publicly, including issues, comments, and contributions to
other Users' repositories, may be viewed by others. By setting your repositories to be viewed
publicly, you agree to allow others to view and "fork" your repositories (this means that others may
make their own copies of Content from your repositories in repositories they control).

If you set your pages and repositories to be viewed publicly, you grant each User of GitHub a
nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub
Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality
(for example, through forking). You may grant further rights if you adopt a license. If you are
uploading Content you did not create or own, you are responsible for ensuring that the Content you
upload is licensed under terms that grant these permissions to other GitHub Users.

6. Contributions Under Repository License

Whenever you make a contribution to a repository containing notice of a license, you license your
contribution under the same terms, and you agree that you have the right to license your
contribution under those terms. If you have a separate agreement to license your contributions
under different terms, such as a contributor license agreement, that agreement will supersede.

Isn't this just how it works already? Yep. This is widely accepted as the norm in the open-source
community; it's commonly referred to by the shorthand "inbound=outbound". We're just making it

explicit.

7. Moral Rights

You retain all moral rights to Your Content that you upload, publish, or submit to any part of the Service, including the rights of integrity and attribution. However, you waive these rights and agree not to assert them against us, to enable us to reasonably exercise the rights granted in Section D.4, but not otherwise.

To the extent this agreement is not enforceable by applicable law, you grant GitHub the rights we need to use Your Content without attribution and to make reasonable adaptations of Your Content as necessary to render the Website and provide the Service.

E. Private Repositories

Short version: *You may have access to private repositories. We treat the content of private repositories as confidential, and we only access it for support reasons, with your consent, or if required to for security reasons.*

1. Control of Private Repositories

Some Accounts may have private repositories, which allow the User to control access to Content.

2. Confidentiality of Private Repositories

GitHub considers the contents of private repositories to be confidential to you. GitHub will protect the contents of private repositories from unauthorized use, access, or disclosure in the same manner that we would use to protect our own confidential information of a similar nature and in no event with less than a reasonable degree of care.

3. Access

GitHub employees may only access the content of your private repositories in the following situations:

- With your consent and knowledge, for support reasons. If GitHub accesses a private repository for support reasons, we will only do so with the owner's consent and knowledge.
- When access is required for security reasons, including when access is required to maintain ongoing confidentiality, integrity, availability and resilience of GitHub's systems and Service.

You may choose to enable additional access to your private repositories. For example:

- You may enable various GitHub services or features that require additional rights to Your Content in private repositories. These rights may vary depending on the service or feature, but

GitHub will continue to treat your private repository Content as confidential. If those services or features require rights in addition to those we need to provide the GitHub Service, we will provide an explanation of those rights.

4. Exclusions

If we have reason to believe the contents of a private repository are in violation of the law or of these Terms, we have the right to access, review, and remove them. Additionally, we may be compelled by law to disclose the contents of your private repositories.

F. Copyright Infringement and DMCA Policy

If you believe that content on our website violates your copyright, please contact us in accordance with our Digital Millennium Copyright Act Policy. If you are a copyright owner and you believe that content on GitHub violates your rights, please contact us via our convenient DMCA form or by emailing copyright@github.com. There may be legal consequences for sending a false or frivolous takedown notice. Before sending a takedown request, you must consider legal uses such as fair use and licensed uses.

We will terminate the Accounts of repeat infringers of this policy.

G. Intellectual Property Notice

Short version: *We own the service and all of our content. In order for you to use our content, we give you certain rights to it, but you may only use our content in the way we have allowed.*

1. GitHub's Rights to Content

GitHub and our licensors, vendors, agents, and/or our content providers retain ownership of all intellectual property rights of any kind related to the Website and Service. We reserve all rights that are not expressly granted to you under this Agreement or by law. The look and feel of the Website and Service is copyright © GitHub, Inc. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS, Javascript, or visual design elements or concepts without express written permission from GitHub.

2. GitHub Trademarks and Logos

If you'd like to use GitHub's trademarks, you must follow all of our trademark guidelines, including those on our logos page: https://github.com/logos.

3. License to GitHub Policies

This Agreement is licensed under this Creative Commons Zero license. For details, see our site-policy repository.

H. API Terms

Short version: *You agree to these Terms of Service, plus this Section H, when using any of GitHub's APIs (Application Provider Interface), including use of the API through a third party product that accesses GitHub.*

Abuse or excessively frequent requests to GitHub via the API may result in the temporary or permanent suspension of your Account's access to the API. GitHub, in our sole discretion, will determine abuse or excessive usage of the API. We will make a reasonable attempt to warn you via email prior to suspension.

You may not share API tokens to exceed GitHub's rate limitations.

You may not use the API to download data or Content from GitHub for spamming purposes, including for the purposes of selling GitHub users' personal information, such as to recruiters, headhunters, and job boards.

All use of the GitHub API is subject to these Terms of Service and the GitHub Privacy Statement.

GitHub may offer subscription-based access to our API for those Users who require high-throughput access or access that would result in resale of GitHub's Service.

I. GitHub Additional Product Terms

Short version: *You need to follow certain specific terms and conditions for GitHub's various features and products, and you agree to the Supplemental Terms and Conditions when you agree to this Agreement.*

Some Service features may be subject to additional terms specific to that feature or product as set forth in the GitHub Additional Product Terms. By accessing or using the Services, you also agree to the GitHub Additional Product Terms.

J. Beta Previews

Short version: *Beta Previews may not be supported or may change at any time, you may receive confidential information through those programs that must remain confidential while the program is private, and we'd love your feedback to make our Beta Previews better.*

1. Subject to Change

Beta Previews may not be supported and may be changed at any time without notice. In addition, Beta Previews are not subject to the same security measures and auditing to which the Service has been and is subject. **By using a Beta Preview, you use it at your own risk.**

2. Confidentiality

As a user of Beta Previews, you may get access to special information that isn't available to the rest of the world. Due to the sensitive nature of this information, it's important for us to make sure that you keep that information secret.

Confidentiality Obligations. You agree that any non-public Beta Preview information we give you, such as information about a private Beta Preview, will be considered GitHub's confidential information (collectively, "Confidential Information"), regardless of whether it is marked or identified as such. You agree to only use such Confidential Information for the express purpose of testing and evaluating the Beta Preview (the "Purpose"), and not for any other purpose. You should use the same degree of care as you would with your own confidential information, but no less than reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of our Confidential Information. You promise not to disclose, publish, or disseminate any Confidential Information to any third party, unless we don't otherwise prohibit or restrict such disclosure (for example, you might be part of a GitHub-organized group discussion about a private Beta Preview feature).

Exceptions. Confidential Information will not include information that is: (a) or becomes publicly available without breach of this Agreement through no act or inaction on your part (such as when a private Beta Preview becomes a public Beta Preview); (b) known to you before we disclose it to you; (c) independently developed by you without breach of any confidentiality obligation to us or any third party; or (d) disclosed with permission from GitHub. You will not violate the terms of this Agreement if you are required to disclose Confidential Information pursuant to operation of law, provided GitHub has been given reasonable advance written notice to object, unless prohibited by law.

3. Feedback

We're always trying to improve of products and services, and your feedback as a Beta Preview user will help us do that. If you choose to give us any ideas, know-how, algorithms, code contributions, suggestions, enhancement requests, recommendations or any other feedback for our products or services (collectively, "Feedback"), you acknowledge and agree that GitHub will have a royalty-free, fully paid-up, worldwide, transferable, sub-licensable, irrevocable and perpetual license to implement, use, modify, commercially exploit and/or incorporate the Feedback into our products, services, and documentation.

K. Payment

Short version: *You are responsible for any fees associated with your use of GitHub. We are responsible for communicating those fees to you clearly and accurately, and letting you know well in advance if those prices change.*

1. Pricing

Our pricing and payment terms are available at github.com/pricing. If you agree to a subscription price, that will remain your price for the duration of the payment term; however, prices are subject to change at the end of a payment term.

2. Upgrades, Downgrades, and Changes

- We will immediately bill you when you upgrade from the free plan to any paying plan.
- If you change from a monthly billing plan to a yearly billing plan, GitHub will bill you for a full year at the next monthly billing date.
- If you upgrade to a higher level of service, we will bill you for the upgraded plan immediately.
- You may change your level of service at any time by choosing a plan option or going into your Billing settings. If you choose to downgrade your Account, you may lose access to Content, features, or capacity of your Account. Please see our section on Cancellation for information on getting a copy of that Content.

3. Billing Schedule; No Refunds

Payment Based on Plan For monthly or yearly payment plans, the Service is billed in advance on a monthly or yearly basis respectively and is non-refundable. There will be no refunds or credits for partial months of service, downgrade refunds, or refunds for months unused with an open Account; however, the service will remain active for the length of the paid billing period. In order to treat everyone equally, no exceptions will be made.

Payment Based on Usage Some Service features are billed based on your usage. A limited quantity of these Service features may be included in your plan for a limited term without additional charge. If you choose to purchase paid Service features beyond the quantity included in your plan, you pay for those Service features based on your actual usage in the preceding month. Monthly payment for these purchases will be charged on a periodic basis in arrears. See GitHub Additional Product Terms for Details.

Invoicing For invoiced Users, User agrees to pay the fees in full, up front without deduction or setoff of any kind, in U.S. Dollars. User must pay the fees within thirty (30) days of the GitHub invoice date. Amounts payable under this Agreement are non-refundable, except as otherwise provided in this Agreement. If User fails to pay any fees on time, GitHub reserves the right, in addition to taking any other action at law or equity, to (i) charge interest on past due amounts at 1.0% per month or the highest interest rate allowed by law, whichever is less, and to charge all expenses of recovery, and

(ii) terminate the applicable order form. User is solely responsible for all taxes, fees, duties and governmental assessments (except for taxes based on GitHub's net income) that are imposed or become due in connection with this Agreement.

4. Authorization

By agreeing to these Terms, you are giving us permission to charge your on-file credit card, PayPal account, or other approved methods of payment for fees that you authorize for GitHub.

5. Responsibility for Payment

You are responsible for all fees, including taxes, associated with your use of the Service. By using the Service, you agree to pay GitHub any charge incurred in connection with your use of the Service. If you dispute the matter, contact GitHub Support. You are responsible for providing us with a valid means of payment for paid Accounts. Free Accounts are not required to provide payment information.

L. Cancellation and Termination

Short version: *You may close your Account at any time. If you do, we'll treat your information responsibly.*

1. Account Cancellation

It is your responsibility to properly cancel your Account with GitHub. You can cancel your Account at any time by going into your Settings in the global navigation bar at the top of the screen. The Account screen provides a simple, no questions asked cancellation link. We are not able to cancel Accounts in response to an email or phone request.

2. Upon Cancellation

We will retain and use your information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements, but barring legal requirements, we will delete your full profile and the Content of your repositories within 90 days of cancellation or termination (though some information may remain in encrypted backups). This information can not be recovered once your Account is cancelled.

We will not delete Content that you have contributed to other Users' repositories or that other Users have forked.

Upon request, we will make a reasonable effort to provide an Account owner with a copy of your lawful, non-infringing Account contents after Account cancellation, termination, or downgrade. You must make this request within 90 days of cancellation, termination, or downgrade.

3. GitHub May Terminate

GitHub has the right to suspend or terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. GitHub reserves the right to refuse service to anyone for any reason at any time.

4. Survival

All provisions of this Agreement which, by their nature, should survive termination *will* survive termination — including, without limitation: ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

M. Communications with GitHub

Short version: *We use email and other electronic means to stay in touch with our users.*

1. Electronic Communication Required

For contractual purposes, you (1) consent to receive communications from us in an electronic form via the email address you have submitted or via the Service; and (2) agree that all Terms of Service, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that those communications would satisfy if they were on paper. This section does not affect your non-waivable rights.

2. Legal Notice to GitHub Must Be in Writing

Communications made through email or GitHub Support's messaging system will not constitute legal notice to GitHub or any of its officers, employees, agents or representatives in any situation where notice to GitHub is required by contract or any law or regulation. Legal notice to GitHub must be in writing and served on GitHub's legal agent.

3. No Phone Support

GitHub only offers support via email, in-Service communications, and electronic messages. We do not offer telephone support.

N. Disclaimer of Warranties

Short version: *We provide our service as is, and we make no promises or guarantees about this service. Please read this section carefully; you should understand what to expect.*

GitHub provides the Website and the Service "as is" and "as available," without warranty of any kind. Without limiting this, we expressly disclaim all warranties, whether express, implied or statutory,

regarding the Website and the Service including without limitation any warranty of merchantability, fitness for a particular purpose, title, security, accuracy and non-infringement.

GitHub does not warrant that the Service will meet your requirements; that the Service will be uninterrupted, timely, secure, or error-free; that the information provided through the Service is accurate, reliable or correct; that any defects or errors will be corrected; that the Service will be available at any particular time or location; or that the Service is free of viruses or other harmful components. You assume full responsibility and risk of loss resulting from your downloading and/or use of files, information, content or other material obtained from the Service.

O. Limitation of Liability

Short version: *We will not be liable for damages or losses arising from your use or inability to use the service or otherwise arising under this agreement. Please read this section carefully; it limits our obligations to you.*

You understand and agree that we will not be liable to you or any third party for any loss of profits, use, goodwill, or data, or for any incidental, indirect, special, consequential or exemplary damages, however arising, that result from

- the use, disclosure, or display of your User-Generated Content;
- your use or inability to use the Service;
- any modification, price change, suspension or discontinuance of the Service;
- the Service generally or the software or systems that make the Service available;
- unauthorized access to or alterations of your transmissions or data;
- statements or conduct of any third party on the Service;
- any other user interactions that you input or receive through your use of the Service; or
- any other matter relating to the Service.

Our liability is limited whether or not we have been informed of the possibility of such damages, and even if a remedy set forth in this Agreement is found to have failed of its essential purpose. We will have no liability for any failure or delay due to matters beyond our reasonable control.

P. Release and Indemnification

Short version: *You are responsible for your use of the service. If you harm someone else or get into a dispute with someone else, we will not be involved.*

If you have a dispute with one or more Users, you agree to release GitHub from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes.

You agree to indemnify us, defend us, and hold us harmless from and against any and all claims, liabilities, and expenses, including attorneys' fees, arising out of your use of the Website and the Service, including but not limited to your violation of this Agreement, provided that GitHub (1) promptly gives you written notice of the claim, demand, suit or proceeding; (2) gives you sole control of the defense and settlement of the claim, demand, suit or proceeding (provided that you may not settle any claim, demand, suit or proceeding unless the settlement unconditionally releases GitHub of all liability); and (3) provides to you all reasonable assistance, at your expense.

Q. Changes to These Terms

Short version: *We want our users to be informed of important changes to our terms, but some changes aren't that important — we don't want to bother you every time we fix a typo. So while we may modify this agreement at any time, we will notify users of any changes that affect your rights and give you time to adjust to them.*

We reserve the right, at our sole discretion, to amend these Terms of Service at any time and will update these Terms of Service in the event of any such amendments. We will notify our Users of material changes to this Agreement, such as price changes, at least 30 days prior to the change taking effect by posting a notice on our Website. For non-material modifications, your continued use of the Website constitutes agreement to our revisions of these Terms of Service. You can view all changes to these Terms in our Site Policy repository.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Website (or any part of it) with or without notice.

R. Miscellaneous

1. Governing Law

Except to the extent applicable law provides otherwise, this Agreement between you and GitHub and any access to or use of the Website or the Service are governed by the federal laws of the United States of America and the laws of the State of California, without regard to conflict of law provisions. You and GitHub agree to submit to the exclusive jurisdiction and venue of the courts located in the City and County of San Francisco, California.

2. Non-Assignability

GitHub may assign or delegate these Terms of Service and/or the GitHub Privacy Statement, in whole or in part, to any person or entity at any time with or without your consent, including the license grant in Section D.4. You may not assign or delegate any rights or obligations under the Terms of Service or Privacy Statement without our prior written consent, and any unauthorized assignment and delegation by you is void.

3. Section Headings and Summaries

Throughout this Agreement, each section includes titles and brief summaries of the following terms and conditions. These section titles and brief summaries are not legally binding.

4. Severability, No Waiver, and Survival

If any part of this Agreement is held invalid or unenforceable, that portion of the Agreement will be construed to reflect the parties' original intent. The remaining portions will remain in full force and effect. Any failure on the part of GitHub to enforce any provision of this Agreement will not be considered a waiver of our right to enforce such provision. Our rights under this Agreement will survive any termination of this Agreement.

5. Amendments; Complete Agreement

This Agreement may only be modified by a written amendment signed by an authorized representative of GitHub, or by the posting by GitHub of a revised version in accordance with Section Q. Changes to These Terms. These Terms of Service, together with the GitHub Privacy Statement, represent the complete and exclusive statement of the agreement between you and us. This Agreement supersedes any proposal or prior agreement oral or written, and any other communications between you and GitHub relating to the subject matter of these terms including any confidentiality or nondisclosure agreements.

6. Questions

Questions about the Terms of Service? Contact us.

Ask a human

Can't find what you're looking for?

Contact us

GitHub

Product	Platform	Support	Company
Features	Developer API	Help	About
Security	Partners	Community Forum	Blog
Enterprise	Atom	Training	Careers
Case Studies	Electron	Status	Press
Pricing	GitHub Desktop	Contact GitHub	Shop
Resources			

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Exhibit 4

United States of America

United States Patent and Trademark Office

NEO4J

Reg. No. 4,784,280
Registered Aug. 4, 2015

Int. Cls.: 9, 35, 41, 42 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

NEO TECHNOLOGY (DELAWARE CORPORATION)
111 E. 5TH AVE.
SAN MATEO, CA 94401

FOR: COMPUTER PROGRAMS FOR MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; COMPUTER PROGRAMS FOR STORING, MANAGING, AND QUERYING DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING TRAINING CLASSES, CERTIFICATION TRAINING, WORKSHOPS, TUTORIAL SESSIONS, AND ONLINE CLASSES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH; PROVIDING TRAINING SERVICES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: PROVIDING A WEB SITE FEATURING TECHNOLOGY THAT ENABLES END USERS TO STORE, MANAGE, AND QUERY DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS; CLOUD COMPUTING FEATURING SOFTWARE FOR USE IN MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER

Director of the United States
Patent and Trademark Office

Reg. No. 4,784,280　DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; TECHNICAL SUPPORT SERVICES, NAMELY, INSTALLATION, ADMINISTRATION, AND TROUBLESHOOTING OF DATABASE APPLICATIONS; COMPUTER SERVICES, NAMELY, PROVIDING CONSULTATION SERVICES AND ADVICE IN THE FIELDS OF DESIGNING COMPUTER DATABASES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF MAINTAINING THE SECURITY AND INTEGRITY OF DATABASES, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-267,006, FILED 4-30-2014.

SIMON TENG, EXAMINING ATTORNEY

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

> *First Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

> *Second Filing Deadline:* You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
> *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

> You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

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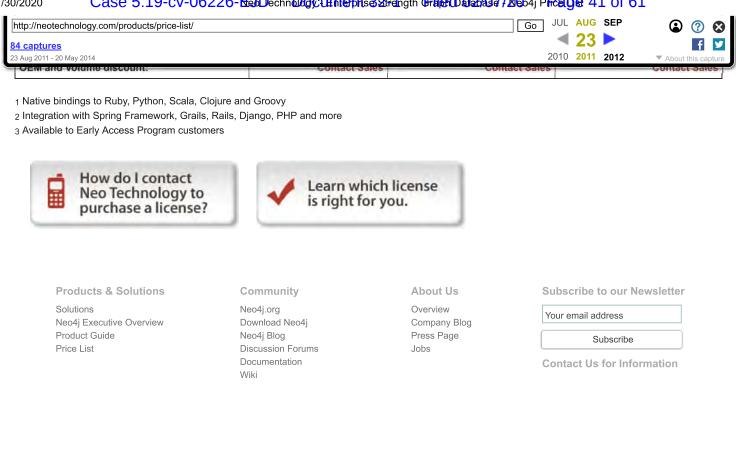| HOME | SOLUTIONS | PRODUCT | SERVICES | CUSTOMERS | COMMUNITY | ABOUT US |

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Neo4j Price List

Price List

Neo Technology offers two commercial editions based on the Neo4j open source graph database.

Both commercial editions can be used in closed-source environments. They are available under a subscription model. Prices are per instance. New releases are included as long as the subscription or annual support and maintenance fees are paid.

Feature	Neo4j Community	Neo4j Advanced	Neo4j Enterprise
Licensing			
License	Open source (GPLv3)	Commercial and AGPL	Commercial and AGPL
Can be used with closed source software	Yes, except OEM	Yes, with commercial license	Yes, with commercial license
Functionality			
Neo4j high performance graph database	Yes	Yes	Yes
Batch inserter for bulk uploads	Yes	Yes	Yes
Shell for console access	Yes	Yes	Yes
Graph algorithm package	Yes	Yes	Yes
Native language bindings[1]	Yes	Yes	Yes
Web frameworks integration[2]	Yes	Yes	Yes
Neo4j Server	Yes	Yes	Yes
Operations and Monitoring			
SNMP & JMX monitoring		Yes	Yes
Neo4j Web Management console	Basic	Full	Enterprise
High load & high availability			
Online backup of running instance			Yes
Online failover to warm spare			Yes
Read slave replication			Yes
Read/write slave replication			Yes
High availability with master failover			Yes
Support & Services			
Support hours		5x10	7x24
Response time		24h	1h
Communication channel		Email	Phone
Technical alerts		Yes	Yes

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1 Native bindings to Ruby, Python, Scala, Clojure and Groovy
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3 Available to Early Access Program customers

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World's Leading Graph Database

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Curses!
This video can't be played with your current setup.

Intro to Neo4j(38:14)

Key benefits of Neo4j

☐ Minutes-to-Milliseconds Performance

Over relational database and other NOSQL alternatives, Neo4j turns complex joins into simple & fast graph traversals.

☐ Fully ACID, Robust & Scalable

Neo4j is an enterprise database with full ACIDity, support for high-availability clustering, and transaction support.

☐ Drastically-Accelerated Development Cycles

Thanks to its flexible data model and Cypher, an intuitive graph query language, Neo4j is easy to use.

☐ Extreme Business Responsiveness

Schemaless, unlike relational, Neo4j is flexible, yet, unlike other NOSQL databases, offers structure and meaning.

Neo4j Enterprise Edition

Neo4j Enterprise Edition is built to perform at scale for startups to enterprise implementations. Commercial subscriptions include the permission to integrate the enterprise editions in closed-source software products, service and support by Neo Technology.

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Latest Neo4j News

Neo4j 2.0.1 Community Released on Windows Azure VM Depot

We have released a Linux distribution of Neo4j 2.0.1 community on Windows Azure's VM Depot website. Users of Windows Azure are now able to copy a platform image of Neo4j 2.0.1 directly from the VM Depot. Once provisioned, a fresh Neo4j database instance is made available via HTTP through port 7474. Check out the slides below for instructions on

Neo4j White Papers

Graph Databases: The Super Fast New Way to Access Social Data

A new type of database significantly changes the standard direction taken by NOSQL. Graph databases, unlike their NOSQL and relational brethren, are designed for lightning-fast access

how to setup and provision the virtual machine

to complex data found in social networks, recommendation engines and networked systems. Get the White Paper »

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NoSQL, Big Data, and Graphs

It used to be that databases were just tasked with digitizing forms and automating business processes. The data was often tabular – take an accounting ledger, for example –and the processes being modeled were reasonably static. Today, the types of data that we are interested in are much more diverse and dynamic. Get the White Paper »

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Graph Database Features	Community Open Source	Personal Startups with up to 3 employees and $100K in annual revenue Free	Startups < $10M in funding < $5M in annual revenue $12K / €12K	Business & Enterprise Medium Business to Global 2000 Contact Sales
Property Graph Model	✓	✓	✓	✓
Native Graph Processing	✓	✓	✓	✓
Native Graph Storage	✓	✓	✓	✓
ACID	✓	✓	✓	✓
Cypher – Graph Query Language	✓	✓	✓	✓
Language Drivers (most popular languages)	✓	✓	✓	✓
REST API	✓	✓	✓	✓
High-Performance Native API	✓	✓	✓	✓
HTTPS (via Plug-in)	✓	✓	✓	✓
Performance & Scalability				
High-Performance Cache	–	✓	✓	✓
Clustering	–	✓	✓	✓
Online Backup	–	✓	✓	✓
Advanced Monitoring	–	✓	✓	✓
Maintenance				

Certified for Windows	–	✓	✓	✓
Certified for Linux	–	✓	✓	✓
Maintenance Releases & Schedules Fixes	✓	✓	✓	✓
Emergency Patches	–	–	–	**Available**

Support

Community Support	✓	✓	✓	✓
Commercial Email Support	–	–	✓	✓
Commercial Phone Support	–	–	–	✓
Support Hours	–	–	**10 x 5**	**Up to 24 x 7**

License

Commercial License	–	✓	✓	✓
Production Instances	–	**3***	**3***	**3+**
Test Instances	–	**3***	**3***	**3+**
# of Developers	–	**up to 2 developers**	**2 developers***	**3+ developers**

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TOP ▲

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Exhibit 10

WHOIS

HOME › GET .ORG › FIND MY .ORG › WHOIS

Search for .ORG, .NGO, .ONG, .OPR, .संगठन or .机构

> neo4j.org

I'm not a robot

reCAPTCHA
Privacy - Terms

FIND YOUR DOMAIN

WHOIS Search Results for Domain Name: NEO4J.ORG Registry

```
Domain ID: D123843482-LROR
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.whois.godaddy.com
Updated Date: 2018-05-10T01:00:16Z
Creation Date: 2006-06-04T23:20:54Z
Registry Expiry Date: 2023-06-04T23:20:54Z
Registrar Registration Expiration Date:
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Reseller:
```

Domain Status: clientTransferProhibited

https://icann.org/epp#clientTransferProhibited

Domain Status: clientUpdateProhibited

https://icann.org/epp#clientUpdateProhibited

Registrant Organization: Neo Technology

Registrant State/Province: California

Registrant Country: US

Name Server: NS57.DOMAINCONTROL.COM

Name Server: NS58.DOMAINCONTROL.COM

DNSSEC: unsigned

URL of the ICANN Whois Inaccuracy Complaint Form

https://www.icann.org/wicf/)

>>> Last update of WHOIS database: 2020-02-06T23:20:58Z <<<

For more information on Whois status codes, please visit

https://icann.org/epp

Access to Public Interest Registry WHOIS information is

provided to assist persons in determining the contents of a

domain name registration record in the Public Interest

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WHOIS - .ORG

an RDDS service that can be queried for additional
information on how to contact the Registrant, Admin, or Tech
contact of the queried domain name.

f   in   y   ⬭   ✉   🔍 SEARCH

BECOME A REGISTRAR   FIND A REGISTRAR   POLICIES   GLOSSARY

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